



New Albany Board of Zoning Appeals
November 22, 2021 Minutes

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Mr. Gallagher, at 7:00 p.m.

Those answering roll call:

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| Ms. Andrea Wilttrout | Absent |
| Mr. Everett Gallagher | Present |
| Mr. Kirk Smith | Present |
| Ms. Kerri Mollard | Present |
| Mr. Shaun LaJeunesse | Present |
| Ms. Marlene Brisk (Council Rep) | Present |

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; and Josie Taylor, Clerk.

Moved by Ms. Mollard to approve the October 25, 2021 meeting minutes, seconded by Mr. LaJeunesse. Upon roll call: Ms. Mollard, yea; Mr. LaJeunesse, yea; Mr. Smith, yea; Mr. Gallagher, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Mr. Gallagher asked if there were any additions or corrections to the Agenda.

Mr. Christian stated none from staff.

Mr. Gallagher swore Mr. Thomas Marano and Mr. Brian Quackenbush to tell the truth and nothing but the truth.

Mr. Gallagher asked if anyone wanted to discuss items not on tonight's Agenda. (No response).

Variiances to allow an accessory structure to be 2,040 sq. ft. in size where code allows a maximum of 1,600, to allow an accessory structure to be 30 feet tall where code allows a maximum height of 25 feet, to allow gravel to be used as a driveway material and to eliminate the pool fencing requirements at 1 Balfour Green(PIDs: 222-004303 and 222-004304).

Applicant: Marano Design Group, c/o Thomas Marano

Mr. Christian presented the staff report.

Mr. Gallagher asked if the applicant had comments to provide.

Mr. Thomas Marano, Marano Design Group, stated he would be happy to answer any questions.

Mr. LaJeunesse asked why the height was designed to be at thirty (30) feet.

Mr. Marano stated the intent was to design the property to appear to be part of an estate and they needed to have a thirty (30) foot height to keep the proportions correct and meet the design goals.

Ms. Mollard asked if the pool was already on the site.

Mr. Marano stated no and the barn structure was not really there either.

Ms. Mollard asked what the existing gravel driveway was used for.

Mr. Marano stated he believed it was an old use.

Ms. Mollard asked if the drive to the primary residence was not gravel.

Mr. Marano stated the existing drive to the residence was chip and seal.

Ms. Mollard stated thank you.

Mr. LaJeunesse asked staff if there were other homes with gravel driveways in the Farms.

Mr. Mayer stated there were homes in the Farms that had either the chip and seal or some type of gravel driveway. Mr. Mayer stated he believed one had a variance and some predated Code.

Mr. LaJeunesse asked what the chip material was.

Mr. Mayer stated chip and seal.

Mr. Marano stated it was an asphalt base with gravel on it that become an impervious surface.

Mr. Smith asked if there would be a pool cover.

Mr. Marano stated yes, it would be an automatic cover.

Ms. Mollard asked staff if this would be the same cover the Board of Zoning Appeals (hereafter, "BZA") had approved last year.

Mr. Christian stated it was ASTM certified which was similar to those used in prior variances.

Mr. Marano stated it was an ASTM certified cover.

Mr. Gallagher asked if there would be any issues with emergency service vehicles, such as fire trucks, using the gravel drive.

Mr. Mayer stated the second driveway would add an access point for emergency vehicles and he did not see it negatively impacting City services to the parcel.

Ms. Mollard asked if it was a secondary access, could one get to the accessory structures from another route.

Mr. Marano stated no.

Ms. Mollard stated if there were a need for emergency services then the squad would need to use the gravel driveway.

Mr. Gallagher asked if those vehicles would be slowed down, did they drive on that kind of driveway.

Ms. Brisk asked if the gravel driveway did not go all the way to the accessory structure.

Mr. Marano stated correct, it stopped short and went to a parking area. Mr. Marano stated the pool was probably equidistant from the parking area and the house. Mr. Marano stated emergency services could go to the main house and just walk back.

Mr. Mayer stated the zoning code did not have any access requirements but building inspectors would check if there were any requirements for access in the building code.

Ms. Mollard stated that given the acreage it was quite a distance to get to the pool.

Mr. Mayer stated he did not know if the residential code had requirements for distances, but he would check that to be sure it was within code.

Mr. Gallagher asked if that could be made into a condition of approval.

Mr. Mayer stated yes.

Ms. Mollard asked what improvements would be made to the original gravel driveway.

Mr. Christian stated it would be resurfaced and made to look better.

Mr. Marano stated they planned to top coat it with another layer of gravel to spruce it up and noted it was really in good shape.

Mr. Gallagher asked how the annual inspections of pool covers had been going.

Mr. Mayer stated there was an initial inspection upon the approval of a variance and installation and after that homeowners were to annually certify their own pool covers and make sure they were serviced. Mr. Mayer stated that if there was a complaint or issue reported then staff could review service letters at that time.

Mr. Gallagher stated they had previously discussed the need to have staff follow up with homeowners because complaints arrived too late after the fact.

Mr. LaJeunesse stated it sounded like there was not a process in place.

Mr. Mayer stated there was no process in place now, but staff could work with the BZA regarding staff's following up with that. Mr. Mayer stated it was currently the homeowner's responsibility to ensure that was being met.

Mr. Gallagher asked if a condition would be possible for that so homeowners would need to send in an annual certification letter and it would be a zoning violation if they did not.

Mr. Mayer stated that if the BZA wanted to put that condition in staff could review the code and policies. Mr. Mayer stated they wanted to be sure it was done right.

Ms. Mollard asked if neighbors, after being notified of this application, had expressed concerns about the gravel driveway.

Mr. Christian stated no.

Mr. LaJeunesse asked how a pool would be certified.

Mr. Mayer stated the certification was usually provided through the servicing by a pool inspector or someone who could service it on an annual basis. Mr. Mayer stated it was an inspection to make sure the cover was operating correctly.

Mr. Gallagher stated the condition used a year ago required the owner to provide an annual certification that the cover was in good working order. Mr. Gallagher stated staff should go back to make sure that was taking place.

Mr. Mayer stated they appreciated that reminder and stated they would go back to that as they were at about a year now.

Mr. Gallagher stated yes.

Mr. LaJeunesse asked how long it would take to combine the properties.

Mr. Mayer stated it would be a two-step process and could take a couple of weeks once submitted to the county.

Mr. LaJeunesse asked if the owners planned to do that.

Mr. Marano stated yes, they had begun the process.

Mr. Gallagher asked if they needed to approve all variances separately or could they approve them all at once.

Mr. Mayer stated it was at the BZA's discretion.

Moved by Mr. Smith to accept the staff report for VAR-112-2021 into the record, seconded by Ms. Mollard. Upon roll call vote: Mr. Smith, yea; Ms. Mollard, yea; Mr. LaJeunesse, yea; Mr. Gallagher, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Mr. LaJeunesse to approve variance VAR-112-2021 with the following conditions:

1. The two properties must be combined as part of the permitting process;
 2. The automatic pool cover is installed and certified annually by the homeowner.
- seconded by Mr. Smith. Upon roll call vote: Mr. LaJeunesse, yea; Mr. Smith, yea; Ms. Mollard, yea; Mr. Gallagher, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Other Business

Mr. Christian noted there would be cases for a BZA meeting in December 2021 and asked if BZA members would be available for such meetings on December 29th or December 22nd.

Mr. Gallagher asked if the date could be moved to December 20th and be held earlier in the day.

Mr. Mayer stated they would check on the timing and if not perhaps the first full week of January 2022.

Mr. Gallagher polled members for comment. (No response.)

Mr. Gallagher adjourned the meeting.

Meeting adjourned at 7:33 p.m.

Submitted by Josie Taylor.



**Board of Zoning Appeals Staff Report
November 22, 2021 Meeting**

**1 BALFOUR GREEN
VARIANCES**

LOCATION: 1 Balfour Green (PIDs: 222-004303 and 222-004304)
APPLICANT: Marano Design Group, c/o Thomas Marano
REQUEST: (A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 2,040 square feet in size where city code allows a maximum of 1,600 square feet.
(B) Variance to C.O. 1165.04(a)(3) to allow a detached accessory structure to be 30 feet tall where code allows a maximum height of 25 feet.
(C) Variance to the New Albany Design Guidelines and Requirements Section V(I.A.1) to allow gravel to be used as a driveway material.
(D) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.
ZONING: R-1
STRATEGIC PLAN: Residential
APPLICATION: VAR-112-2021

Review based on: Application materials received on October 22, 2021.

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests the following variance related to the addition of an accessory structure and a pool at 1 Balfour Green in the New Albany Farms subdivision.

- (A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 2,040 square feet in size where city code allows a maximum of 1,600 square feet.
- (B) Variance to C.O. 1165.04(a)(3) to allow a detached accessory structure to be 30 feet tall where code allows a maximum height of 25 feet.
- (C) Variance to the New Albany Design Guidelines and Requirements Section V(I.A.1) to allow gravel to be used as a driveway material.
- (D) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.

II. SITE DESCRIPTION & USE

This 14.32+/- acre site is currently made up of two properties which will be combined into one as part of the permitting process. The site is located in the New Albany Farms subdivision, west of Kitzmiller Road and north of Morse Road. It is zoned R-1 and contains a single-family home. The surrounding properties are residentially zoned and used.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

III. EVALUATION

(A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 2,040 square feet in size where city code allows a maximum of 1,600 square feet.

The following should be considered in the Board’s decision:

1. The applicant proposes to construct a 2,040 square foot accessory structure near the center of the property. C.O. 1165.04(a)(1) states that the maximum permitted area for a detached structure on a greater than 2 acres is 1,600 square feet therefore, a variance is required.
2. The site is currently made up of two properties that will be combined into one as part of the permitting process for this structure with a total lot size of 14.32+/- acres. Staff recommends a condition of approval that the two lots are combined.
3. The variance request meets the spirit and intent of the requirement which is to ensure that detached structures are properly scaled in relation to the size of the lot. The code requirement sets maximum area requirements for all lots with the understanding that there would be instances, such as this one, where a variance would be required for larger lots with more development space.
 - o 95% of the lots within New Albany are two acres or less and only 5% are greater than 2 acres.

- The current code allows for an additional 400 square feet of space for every acre, starting at a maximum of 800 for lots less than 1 acre.
 - Once the two existing lots are combined, the property will be 14.32+/- acres in size, making it one of the largest residential lots in the city. The accessory structure appears to be appropriately scaled considering the size of the lot.
4. The variance does not appear to be substantial. While the structure is larger than what is permitted by code, the structure takes up less than 0.32% of the total lot area.
 5. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment.” The property is located adjacent to the New Albany Farms subdivision which is made up of the largest residentially used lots and primary dwellings in New Albany therefore this structure will not alter the character of the neighborhood.
 6. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

(B) Variance to C.O. 1165.04(a)(3) to allow a detached accessory structure to be 30 feet tall where code allows a maximum height of 25 feet.

The following should be considered in the Board’s decision:

1. C.O. 1165.04(a)(3) states that detached accessory structures are permitted to be no taller than the primary structure on a lot and not exceed 25 feet in height. The proposed accessory structure will be 30 feet tall therefore, a variance is required.
2. The variance request meets the spirit and intent of the requirement which is to ensure that detached structures are appropriately scaled in relation to the primary structure on the site. While the applicant proposes to exceed the 25-foot height limitation, it is shorter than the 45.5-foot-tall primary structure on the property. This ensures that the proposed accessory structure will be secondary in comparison to the primary home, accomplishing the spirit and intent of the requirement.
3. The variance does not appear to be substantial. The applicant states that the accessory structure is designed as a barn. The city architect states that historically, barns are larger and taller structures used to store larger vehicles and equipment. The variance appears to be appropriate given the barn is designed with a historic size and shape and the appearance it has been renovated over time.
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment” if the variance is granted. The property is located in the New Albany Farms subdivision which is made up of the largest residential lots and structures in New Albany therefore this larger, taller structure will not alter this established character.
5. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

(C) Variance to the New Albany Design Guidelines and Requirements Section V(I.A.1) to allow gravel to be used as a driveway material.

The following should be considered in the Board’s decision:

1. New Albany DGR Section 5 (I.A.1) states that asphalt, brick, stone, or simulated stone driveway pavers are appropriate surfaces for driveways and parking areas. The site is currently served by two driveways, one drive that leads to the primary home on the property and a secondary gravel drive that leads to the center of the site. The existing gravel drive is 915-foot-long and the applicant is seeking a variance to allow it to remain gravel and extend it 525 feet

- further into the property to lead to a gravel parking lot that will serve the proposed accessory structure.
2. The variance does not appear to be substantial. A large portion of the gravel driveway exists today and is used as a secondary driveway for the property that does not serve the primary structure. Additionally, the same request has been approved by the Architectural Review Board at 3915 Reynoldsburg New Albany Road (ARB-72-2015). In their approval, the ARB stated that the use of the material was appropriate as the property was along a rural roadway, it was an existing condition and it matched the rural/agrarian character of the area. The proposed variance appears to have the same circumstances. The property is located on a private road and the general character of the New Albany Farms subdivision is rural due to the large size of the lots, therefore, the use of gravel appears appropriate in this case.
 3. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment” if the variance is granted. The property is located in the New Albany Farms subdivision which is made up of private roads that are not accessible to the general public and this secondary driveway does not serve the primary home on the property. For these reasons, granting the variance is not precedent setting for future, similar cases.
 4. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

(D) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.

The following should be considered in the Board’s decision:

Site Specific Considerations:

- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.
- The city’s pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction is to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The pool is located near the center of the property, adjacent to the proposed accessory structure.
- There is an existing 4 rail horse fence along the parcel frontage of Balfour Green, Kitzmiller Road and Morse Road. The height and design of horse fence is not designed to prevent uncontrolled access. There is substantial landscaping throughout the entire site and a large pond in the eastern portion of the site.
- This parcel is one of the largest in the entire city at 14.32+/- acres resulting in the pool being located greater distances from other residential properties and public roads. The pool is approximately 355 feet from Kitzmiller Road, 399 feet from Balfour Green, 490 feet from Morse Road and 330 feet from the western property line. Additionally, the property is located in the New Albany Farms subdivision which is a gated community that the general public does not have access to. All of these factors contribute to limiting the ability to gain access to the pool.
- The applicant proposes to use an ASTM certified automatic pool safety cover. This is a similar pool cover the BZA approved for the same variance request at 6, 10 and 14 New Albany Farms. Pool covers are recognized by some building codes as an appropriate method to secure a pool. However, the city has not adopted a code that allows the use of covers. The city’s private

swimming pool ordinance regulates the construction of private pools within the city and requires a 4-foot fence affixed with an operable gate and lock.

- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment”. The pool is adequately screened and substantially setback from public rights-of-way.

History:

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

1. The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
2. The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
3. The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason, the BZA approved the variance while stating some homes may be too close to each other for a pool cover.
4. The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
5. The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property’s size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
 - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
 - The pool area is fully enclosed by a house, fence, or wall.
 - The existing 54” and 44” horse fence counts towards the enclosure of the pool.
 - The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18th.
 - The pool cover is certified annually by the homeowner.
6. The BZA approved a variance to allow a pool cover in-lieu of a fence on November 23, 2020 for 10 New Albany Farms Road (VAR-84-2020). The BZA stated the size of the property (7.81 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The members who voted against the variance stated that they did not believe that the applicant demonstrated how the pool cover would provide the same safety as a fence and the fact that there is not an established process to verify that the pool covers are certified annually.

Analysis

Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the

applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The other variances within the New Albany Farms subdivision were approved because the BZA determined the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. All applications have included the installation of a powered automatic safety cover.

This property contains many similarities with the homes at 6, 10 and 14 New Albany Farms in terms of limited proximity and access.

The parcel is one of the largest in the city at 14.32+/- acres. The pool is centrally located behind the home and is substantially setback from all property lines which contribute to limiting access to the pool. Additionally, the property is located in a gated community which substantially limits access to the pool from the general public. There is substantial landscaping on the site, providing an adequate barrier to the pool from neighboring properties and areas outside of the gated community. It appears these are factors related to this parcel that help to prevent uncontrolled access and therefore not adversely affect the public safety of those residing or working in the vicinity similar to 6, 10 and 14 New Albany Farms.

IV. RECOMMENDATION

Staff is supportive of the variance requests for the proposed accessory structure. Even though the accessory structure is larger and taller than what is permitted by code, it is appropriately scaled in relation to the lot as it makes up less than 0.32% of the total lot area. Additionally, while it is taller than what is permitted by code it is still shorter than the primary home on the property which accomplishes the spirit and intent of the requirement. The use of gravel as a driveway material appears to be appropriate in this case due to the rural/agrarian character of the neighborhood, the fact that it is located on private street and that it is not the driveway for the primary home on the property.

Staff is also supportive of the pool fence variance request. The property shares the same characteristics with 6, 10 and 14 New Albany Farms where the same variance was granted by the BZA in the past. The large size of the property in addition to being located in a gated community address proximity and access factors that have been important in other past variances since it creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors and public roads.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

Move to approve application VAR-112-2021 with the following condition.

3. The two properties must be combined as part of the permitting process.
4. The automatic pool cover is installed and certified annually by the homeowner.

Approximate Site Location:



Source: Google Earth